

STATE OF MICHIGAN
COURT OF APPEALS

GREGORY SMITH,

Plaintiff/Counterdefendant-
Appellee,

v

TROJAN, LLC,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

April 12, 2005

No. 252244

Oakland Circuit Court

LC No. 2003-007998-AV

Before: Whitbeck, C.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant Trojan, LLC appeals by leave granted a circuit court order affirming a default judgment entered in favor of plaintiff Gregory Smith. We reverse and remand for further proceedings consistent with this opinion.

I. Basic Facts And Procedural History

Gregory Smith filed suit against Trojan in district court, seeking damages for Trojan's refusal to pay him for services rendered relating to the repair and maintenance of Trojan's vintage military airplane. Trojan's failure to appear at a scheduled pretrial hearing led to entry of a default judgment. Trojan filed a motion to set aside the default judgment, which the district court denied. The circuit court affirmed, finding that the district court did not abuse its discretion in refusing to set aside the default judgment.

II. Service And Jurisdiction

A. Standard Of Review

Trojan contends that the district court erred by finding that it received proper service of process and that it had jurisdiction over Trojan. We review de novo questions relating to personal jurisdiction¹ as well as issues involving a trial court's interpretation and application of court rules.²

¹ *Poindexter v Poindexter*, 234 Mich App 316, 319; 594 NW2d 76 (1999).

² *Peters v Gunnell, Inc*, 253 Mich App 211, 225; 655 NW2d 582 (2002).

B. MCL 450.4207(1)(a) & (b)

Pursuant to MCL 450.4207(1)(a) & (b), a Michigan limited liability company (LLC) is required to have a “resident office” and a “resident agent” in this state. MCL 450.4207(2) provides: “The resident agent appointed by a limited liability company is an agent of the company upon whom any process, notice, or demand required or permitted by law to be served upon the company may be served.”

C. MCR 2.105(H)(1)

Michigan court rules do not expressly address the proper manner of service on an LLC. However, MCR 2.105(H)(1) provides that “[s]ervice of process on a defendant may be made by serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process.” Moreover, MCR 2.105(A) provides:

Individuals. Process may be served on a resident or nonresident individual by

(1) delivering a summons and a copy of the complaint to the defendant personally; or

(2) *sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee.* Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

D. The Service Of Process Rules

The purpose of service of process rules is to provide actual notice of a lawsuit and an opportunity to defend.³ A court shall not dismiss an action for improper service unless the service failed to inform the defendant of the action within the time allotted under the court rules.⁴ Therefore, the focus is not necessarily on the process used to provide notice but on whether the service provided timely notice of the complaint to an authorized person.

Here, it is undisputed that Trojan is an LLC authorized to transact business in Michigan. It is also undisputed that Larry Hofmeister was the resident agent of Trojan at the time this lawsuit was initiated and that Smith served Hofmeister with the summons and complaint by certified mail. Pursuant to MCR 2.105(H)(1), Smith effectuated service on Trojan by serving Hofmeister, a person authorized to receive service on behalf of Trojan. We conclude that the district court did not err by finding that Trojan received proper service of process. Because service was valid, we hold that the district court could exercise personal jurisdiction over Trojan.⁵ Further, we hold that Trojan’s assertion that Hofmeister’s answer to Smith’s complaint

³ MCR 2.105(I)(1).

⁴ MCR 2.105(J)(3); *Holliday v Townley*, 189 Mich App 424, 425; 473 NW2d 733 (1991).

⁵ See *Alycekay Co v Hasko Constr Co*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989).

did not confer jurisdiction over Trojan is irrelevant to this appeal because the record indicates that the district court based its exercise of jurisdiction on the fact that Hofmeister, as Trojan's resident agent, received valid service of process.

III. Trojan's Support For Its Request To Set Aside The Default Judgment

A. Standard Of Review

Trojan also contends that the district court erred by finding that it failed to properly support its request to set aside the default judgment. We review a lower court's refusal to set aside a default judgment for an abuse of discretion.⁶ An abuse of discretion constitutes more than a mere difference in judicial opinion.⁷ A trial court abuses its discretion when a result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias."⁸ Although the law favors adjudication of a claim based on the merits, the policy of this state is generally opposed to setting aside default judgments that have been appropriately entered.⁹ Moreover, a trial court's interpretation and application of a court rule is a question of law that we review de novo.¹⁰

B. MCR 2.603(D)(1)

MCR 2.603(D)(1) governs the setting aside of a default or default judgment. It provides:

A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

A reviewing court must consider separately the "meritorious defense" and "good cause" elements of a motion to set aside a default judgment.¹¹ To establish a meritorious defense, a party seeking to set aside a default judgment must file an affidavit supporting that defense.¹² To establish "good cause," a party must show "a substantial irregularity or defect in the proceeding on which the default is based or a reasonable excuse for failure to comply with the requirement that created the default."¹³ "[I]f a party states a meritorious defense that would be absolute if

⁶ *Amco Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003).

⁷ *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999).

⁸ *Id.* at 227-228 (citations omitted).

⁹ *Id.* at 229.

¹⁰ *Peters, supra* at 225.

¹¹ *Alken-Ziegler, supra* at 229-234.

¹² *Id.* at 229.

¹³ *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 531; 672 NW2d 181 (2003).

proven, a lesser showing of ‘good cause’ will be required than if the defense were weaker, in order to prevent a manifest injustice.”¹⁴

C. Meritorious Defense

Here, Trojan provided the district court with two affidavits from owners Robert Gaines and Todd Smith to demonstrate a meritorious defense. However, the district court ruled that the affidavits were insufficient to show a meritorious defense. Gaines’ affidavit asserted that Gregory Smith was hired to perform the annual inspection and engine replacement on Trojan’s airplane because “he had experience with this aircraft and work had been satisfactory up to this point.” According to the affidavit, Gregory Smith assured the owners that he would perform the repairs himself but might use an “inexperienced assistant at his side periodically.” Again according to the affidavit, Gregory Smith further assured the owners that “there would be no change in his operational procedures” and that the work would be “business as usual.”

According to the affidavit, “[o]nce the work commenced on this annual inspection and engine replacement it became apparent that it was not business as usual.” The work was performed at “an extremely slow rate.” Further, the affidavit stated that Gregory Smith failed to honor the agreement because he did not perform a majority of the work; that he sent his inexperienced assistant to perform most of the repairs; that the assistant lacked the training and experience necessary to work on “the advanced mechanical systems, hydraulic systems and other systems” of a T-28 military airplane; that the assistant performed repairs that resulted in additional damage to the airplane and created a “dangerous situation”; that Trojan was required to hire a replacement mechanic, Pat Nugent, to “correct[] the deficiencies created by this inexperienced mechanic sent by Mr. Smith”; that he failed to complete some of the work agreed upon; that his bill contained “obvious overcharges” for his work and included charges for work that Nugent performed; that he refused Gaines’ request to meet with the owners to “work out an equitable resolution for both parties”; and that he supplied a list of work for which he sought compensation, but failed to provide a detailed list of the repairs and work orders as required by the Federal Aviation Administration (FAA).

Todd Smith’s affidavit asserted that Gregory Smith was hired to perform “minor repairs” on Trojan’s airplane; that Gregory Smith charged Trojan “for work not performed, work performed in a non-workmanlike manner and for non-productive time spent on the job”; and that Trojan suffered damages because Gregory Smith hired “non-qualified mechanics” to perform repairs on the airplane and caused damage to the hangar floor while performing repairs.

According to the facts set forth in these affidavits, we conclude that Trojan had legitimate defenses and setoff claims against Gregory Smith’s claim for reimbursement for services rendered. The affidavits alleged that Gregory Smith failed to complete the repairs, failed to perform the work in a workmanlike manner resulting in further damage to Trojan’s airplane, and overcharged Trojan for his services by billing for repairs that were unnecessary, incomplete, or never performed. These facts, if proven, would significantly reduce the amount of damages that Gregory Smith was entitled to recover. Moreover, an affidavit by an FAA-certified expert

¹⁴ *Alken-Ziegler, supra* at 233-234.

mechanic was unnecessary to demonstrate that Trojan was billed for work that Smith never performed or that required additional repairs. Therefore, we disagree with the district court's assessment of the evidence Trojan presented and hold that the two affidavits contained sufficient facts to show a meritorious defense.

D. Good Cause

Having demonstrated a meritorious defense, a defendant must show good cause to set aside the default judgment. Here, Trojan argues that the failure to file and enter a default and to serve the default on defendant was contrary to the court rules. MCR 2.603(A) provides that a court is permitted to enter a default against a party who has failed to "plead or otherwise defend" in an action when that fact is "made to appear by affidavit or otherwise." In the district court, the court clerk is required to send notice of the entry of default to the defaulted party.¹⁵

Although the entry of a default is generally a ministerial act, its purpose is to provide notice to a party that a default judgment is imminent, thereby allowing that party the opportunity to move to set aside the default.¹⁶ Failure to properly notify a party of a default pursuant to MCR 2.603(A)(2) may establish a substantial defect in the proceedings.¹⁷ However, a defect in the proceedings must prejudice the defaulted party in order to constitute good cause.¹⁸

The record here indicates that the district court did not follow the proper procedure for entering the default judgment. When Trojan failed to appear at the pretrial hearing scheduled for April 15, 2003, Gregory Smith requested a default judgment, and the district court entered a default judgment in his favor that same day. The district court did not enter a default before entering the default judgment, nor did Trojan receive notice of a default or default judgment before the default judgment was entered. The district court's failure to enter a default or notify Trojan of a default before entering the default judgment resulted in prejudice to Trojan, because the lack of notice precluded it from moving to set aside the default prior to the entry of the default judgment against it. Therefore, we conclude that the district court's failure to enter a default and to provide the requisite notice to Trojan constituted a substantial defect in procedure.

In addition to a procedural defect, a reasonable excuse for failing to comply with the requirements forming the basis of a default may establish good cause to set aside the default judgment.¹⁹ Trojan contends that the circumstances resulting in defective service of process constituted good cause to set aside the default judgment. Apparently, Hofmeister and the other owners of the airplane had a financial disagreement and Hofmeister sold all his shares in Trojan to the other owners in September 2001. Although technically still the resident agent of Trojan when this lawsuit was filed, Hofmeister no longer had an ownership interest in the airplane and

¹⁵ MCR 2.603(A)(2)(a).

¹⁶ *Harvey Cadillac Co v Rahain*, 204 Mich App 355, 358-359; 514 NW2d 257 (1994).

¹⁷ *Bradley v Fulgham*, 200 Mich App 156, 158-159; 503 NW2d 714 (1993).

¹⁸ *Alycekay Co*, *supra* at 506-507.

¹⁹ *ISB Sales Co*, *supra* at 536-537.

was no longer a member of Trojan when he received the complaint and notice of the scheduled pretrial hearing. Hofmeister failed to forward notice of the pending lawsuit or notice of the scheduled pretrial hearing to any of Trojan's owners or members.

MCL 450.4207(3) provides that "[u]pon accepting service of process, the resident agent shall promptly forward it to the member or manager of the limited liability company at his or her last known address." Hofmeister's inaction resulted in Trojan's failure to receive actual notice of the pending lawsuit and to appear at the hearing. One of the purposes of the requirements for service of process is to give a defendant "actual notice of the proceedings" and the "opportunity to be heard."²⁰ There is no question that Trojan was served with notice of the pending lawsuit through its agent Hofmeister. However, Trojan's owners and members never received actual notice or had the opportunity to assert a defense. Therefore, we conclude that Trojan has shown a reasonable excuse for failing to attend the scheduled pretrial conference based on Hofmeister's inaction and the lack of actual notice.

Although reviewing courts are generally opposed to setting aside default judgments that have been appropriately entered, we find that the district court improperly dismissed as irrelevant the extraordinary circumstances related to Trojan's notification of this lawsuit and entry of the default judgment. Accordingly, both the procedural defect and the reasonable excuse established good cause. Because Trojan showed good cause and a meritorious defense, we hold that the district court's refusal to set aside the default judgment constituted an abuse of discretion and that Trojan is entitled to a trial on the merits. In light of our conclusion, we need not address Trojan's alternate grounds for vacating the default judgment.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Donald S. Owens

²⁰ MCR 2.105(I)(1).